



# CHAIN OF COMMAND

# Discussions For Today



- ❖ The importance of having a chain of command
- ❖ What a grievance procedure should look like
- ❖ What could happen if the grievance procedure isn't followed;
  - ❖ Work Health and Safety
  - ❖ Fair Work
  - ❖ Bullying
  - ❖ Anti - Discrimination
  - ❖ Workers Compensation
- ❖ Importance of keeping accurate records

# Importance of following a Chain of Command



- ❖ An effective chain of command can improve the efficiency of the business.
- ❖ A chain of command means going to the next level of authority within the workplace if there is an issue. It is therefore important for the business to have a current Organisational chart and Grievance or Dispute procedures.
- ❖ There are however some exceptions in relation to breaking the chain of command.
  - ❖ The issue has not been dealt with at a lower level of authority
  - ❖ The issue involves a manager/supervisor who is at a lower level of authority
  - ❖ An employee does not feel comfortable speaking to a person at a lower level of authority.

# Work Health and Safety



**PCBU** has the primary duty of care under the WHS Act

**Officers** must exercise due diligence to ensure the business complies with the WHS Act and Regulations.

**Workers** also have a duty to:

- ❖ take reasonable care for their own health and safety
- ❖ take reasonable care that their acts or omissions do not adversely affect the health and safety of other persons
- ❖ comply, so far as is reasonably practicable, with any reasonable instruction given by the PCBU, and
- ❖ co-operate with any reasonable policies and procedures of the person conducting the business or undertaking, such as a workplace bullying policy.

# Work Health and Safety



**Category 1** – a duty holder, without reasonable excuse, engages in conduct that recklessly exposes a person to a risk of death or serious injury or illness.

**Category 2** – a duty holder fails to comply with a health and safety duty that exposes a person to risk of death or serious injury or illness.

**Category 3** – a duty holder fails to comply with a health and safety duty.

Type	Information		
	Corporation	Individual as PCBU or Officer	Individual as worker or other
Category 1	\$3 million	\$600 000, five years jail or both	\$300 000, five years jail or both
Category 2	\$15 million	\$300 000	\$150 000
Category 3	\$500 000	\$100 000	\$50 000

**The current maximum Tasmanian penalties are \$195,000 for corporations or \$65,000 for individuals**

# Fair Work



- ❖ Fair Work Ombudsman or Fair Work Commission
- ❖ Owner – CEO – Managing Director
- ❖ Manager/s
- ❖ Supervisors or Team Leaders
- ❖ Workers or Contractors

# Fair Work Example



*February 2015*

- ❖ Dozens of workers shared in more than \$93,100 back-pay
- ❖ The Fair Work Ombudsman randomly audited the business
- ❖ employees were reimbursed all money owed
- ❖ The underpayments occurred because the employer had classified some workers incorrectly and was not fully aware of the need to pay penalty rates

# Bullying



- ❖ Fair Work Ombudsman or Work Safe Tasmania
- ❖ Owner – Managing Director – CEO
- ❖ Managers, Supervisors or Team Leaders
- ❖ Workers or Contractors



# Bullying - Example



## *Applicant v Respondent (2014)*

- ❖ Senior commonwealth department employee alleged that his manager bullied him by treating him like a slave and fabricating performance issues.
- ❖ The manager argued that the employee was underperforming and that he had been attempting to manage his work to improve performance.

**The Fair Work Commission found that the Managers concerns were not motivated by any intention to bully him and the actions that they undertook were reasonable.**

# Anti Discrimination



- ❖ Office of the Anti-Discrimination Commission
- ❖ Owner – Managing Director – CEO
- ❖ Managers, Supervisors or Team Leaders
- ❖ Workers or Contractors
- ❖ There are three possible outcomes:
  1. **complaint dismissed**
  2. **complaint proceeds to conciliation**
  3. **complaint referred to tribunal**

# Anti-Discrimination - Example



- ❖ A nurse was required to work a day shift between two night shifts
- ❖ The employee requested regular shifts because he suffered from post-traumatic epilepsy and his medications caused him to have sleeping difficulties

**It was ruled that the employee's request for regular shifts was reasonable and swapping shifts caused him a disadvantage.**

# Workers Compensation



- ❖ Workers Compensation Tribunal
- ❖ Owner – Managing Director – CEO
- ❖ Managers, Supervisors or Team Leaders
- ❖ Workers or Contractors

## What happens if I don't keep the right records?



- ❖ Most jurisdictions can impose fines and penalties.
- ❖ Jurisdictions can take you to Court for not having or retaining required records therefore you should consider the length of time when retaining records.
- ❖ The lack of information impacts on your capacity to defend actions that are made against you personally or against the business (eg: Discrimination, Fair Work Ombudsman or Work Safe Tasmania fines or penalties).

# How do you risk manage your business?



To assist in the resolution of issues the following process should be undertaken:

- ❖ Review your Policies and Procedures;
- ❖ Speak to the person(s) involved directly to see if you can settle the issue;
- ❖ Seek assistance from your **Supervisor** – a written statement often assists in clarifying issues alternatively your **Supervisor** will take notes of your meeting;
- ❖ Seek assistance from the **Manager** if you have not received a response from the **Supervisor** in 5 business days
- ❖ Seek assistance from the **Managing Director/ Owner** if you have not received a response from the **Manager** in 7 business days
- ❖ Notify your Manager if you would like conciliation and/or mediation (appointed in consultation between Management and the worker).



ANY  
QUESTIONS?